

RESOLUTION NUMBER R- 310173

DATE OF FINAL PASSAGE DEC 18 2015

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE SETTLEMENT BETWEEN
THE PUTATIVE CLASS OF PLAINTIFFS IN "*AGLIO ET AL V.
THE CITY OF SAN DIEGO.*"

WHEREAS, the City of San Diego (City) is a named defendant in the case arising from the closure of a mobile home park on Mission Bay: *Aglío, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00081994-CU-EI-CTL (*Aglío*).; and

WHEREAS, in Closed Session on July 28, 2015, the San Diego City Council, by the following votes: Yeas, Districts 1, 3, 4, 5, 6, 7 and 8; Nays, None; and absent, District 2, authorized the conclusion of this litigation as to the per the terms of Settlement Agreement and Release reflected in the proposed settlement and release; and

WHEREAS, the City will perform and make payments required by the Settlement Agreement and Release which shall be on file in the Office of the City Clerk as RR-

310173-1; and, NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the Council authorizes:

1. The Mayor or his designee to execute the settlement agreement in the *Aglío* matter and to pay the sum of \$19,995,000 in settlement of each and every claim for damages, interest, costs, and fees of any type, including attorney fees, against City of San Diego, its agents and employees, arising from *Aglío, et al. v. City of San Diego*, San Diego Superior Court Case No. 37-2009-00081994-CU-EI-CTL.

2. The Mayor or his designee to amend the contract with Overland, Pacific & Cutler, Inc., to extend the contract term through December 31, 2016 and expand the scope of work to include updating the Relocation Impact Report and the administration and payment of claims consistent with Amendment No. 3 to the Agreement for Consulting Services by Overland Pacific & Cutler, at costs not to exceed \$395,250, attached hereto as Attachment A and which is on file with the Office of the City Clerk as Document No. RR- 310173-2.

3. The Chief Financial Officer to appropriate and transfer \$2,000,000 from the De Anza Operating Fund 200329 to the Public Liability Fund 720045 for the purpose of funding a portion of this action, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

4. The Chief Financial Officer to transfer \$15,000,000 from the Public Liability Reserve- Contingency Fund 720046 to the Public Liability Fund 720045 for the purpose of funding a portion of this action.

5. The Chief Financial Officer to appropriate and expend \$17,000,000 from the Public Liability Fund, Fund 720045 in Fiscal Year 2016, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

6. The Chief Financial Officer to appropriate and expend \$2,995,000 from the Public Liability Fund No. 720045 in Fiscal Year 2017, contingent upon the adoption of the Annual Appropriation Ordinance and contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

7. The Chief Financial Officer to appropriate and expend an amount not to exceed \$395,250 in total payment to Overland, Pacific & Cutler, Inc., consistent with Amendment No. 3 to the Agreement for Consulting Services by Overland Pacific & Cutler from the public liability fund 720045, contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for this expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: JAN I. GOLDSMITH, City Attorney

By D.F. Bamberg for
John Riley
Chief Deputy City Attorney

JER:aml
12/09/2015
Or. Dept.: City Attorney
CC No. 3000008413 & 3000008414
Doc. No. 1177923

I certify that this Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 15 2015.

ELIZABETH S. MALAND
City Clerk

By Stacy Broad
Deputy City Clerk

Approved: 12/17/15
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

ATTACHMENT A

**AMENDMENT NO. 3 TO THE AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND OVERLAND, PACIFIC & CUTLER, INC.
FOR CONSULTING SERVICES**

This Amendment No. 3 to the Agreement for Consulting Services by Overland, Pacific & Cutler (the "Consultant Agreement") is entered into between the City of San Diego (City) and Overland, Pacific & Cutler, Inc. (Consultant or OPC) for Consultant to provide professional services to City related to the De Anza Cove Mobilehome Park (Park).

RECITALS

City and Consultant wish to extend the term of the Consultant Agreement, to add additional services to the Scope of Services, and to add additional compensation for these additional services, by amending the Consultant Agreement as follows:

1. The Scope of Services to be performed by Consultant, as set forth in Exhibit B of the Consultant Agreement, is supplemented to include the additional services set forth in Attachment 1 hereto.
2. The term of the Consultant Agreement is extended through December 31, 2016. This Consultant Agreement cannot extend beyond this date without Council approval by ordinance.
3. The compensation to be paid to Consultant for the additional services, as described in Attachment 1 hereto, is set forth in the Fee Schedule, which is attached hereto as Attachment 2, for a not-to-exceed amount of \$395,250.00 for all services performed under this Consultant Agreement.
4. All other terms and provisions of the Consultant Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment 3 is executed by City and Consultant acting by and through their authorized officers.

OVERLAND, PACIFIC & CUTLER

THE CITY OF SAN DIEGO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form and content this ____ day of _____, 2015

Jan I. Goldsmith, City Attorney

By: _____

Chief Deputy City Attorney

ATTACHMENT #1 TO AMENDMENT #3 OF THE CONTRACT BETWEEN CITY OF SAN DIEGO AND OPC

SCOPE OF WORK

Amend Relocation Impact Report

OPC will amend the January 2015 Relocation Impact Report to define Aglio Class Members and to describe the mitigation program and claims procedures. An amendment will be prepared, with information reviewed and analyzed from the court approved agreement and/or Client provided information.

Claims and Advisory Assistance to Aglio Class Members

OPC will provide relocation assistance services to Aglio Class Members of the Park, as outlined in the attached Scope of Services. There are 240 Aglio class members that are expected to submit claims and utilize advisory services related to claims assistance, identifying replacement housing, removing their coach and/or personal property from the Park, and securing any needed vendor services related to vacating the Park.

Advisory Services to Non-Class Members

There are approximately 5 De Anza Cove resident Non-Class members who may not be eligible for financial benefits as described in the October 2014 Amended Judgment and/or Aglio Agreement. OPC will provide advisory services to Non-Class Members to identify replacement housing and secure vendor services related to vacating the Park.

Trust Account Administration and Check Processing

Payments to eligible Aglio Class Members will require the processing and issuing of checks to approximately 240 claimants from February 2016 through October 2016. OPC will obtain written authorization from a designated City representative prior to release of funds and provide monthly bank account statements and reconciliations.

Project Management

In order to have a thorough and coordinated work effort with our client and provide QA/QC for OPC's work product and staff services, Project Management services will be necessary. Scope of services will include those described in the following detailed scope of work.

Detailed Scope of Work

Amend Relocation Impact Report (RIR):

- Review and analyze the Aglio court approved agreement and/or Client provided information regarding Aglio member definition, the mitigation program, and claims procedures.
- Amend RIR to define Aglio Class Members, and describe mitigation and claims procedures for Aglio Class Members per the court approved agreement and/or Client provided information.

Claims and Advisory Services for Aglio Class Members and Implementation of Park Closure:

- Review all Aglio Class Member claims and recommend complete and valid claims for payment.
- Meet with Aglio Class Members, as reasonable, to address any claim compensation disputes/errors.
- Meet with Aglio Class Members, who request disability modifications and submit claim where reasonable and necessary.
- Provide referrals to other parks with vacant spaces, to coaches that are for-sale or rent in other parks, and to other housing options (for-sale housing, apartments, assisted living), to be updated on a periodic basis.
- Coordinate with the property manager, the Client and the occupants to address issues associated with individual households.

ATTACHMENT #1 TO AMENDMENT #3 OF THE CONTRACT BETWEEN CITY OF SAN DIEGO AND OPC

- Refer the services of mobile home movers and personal property movers to relocate trailers/mobile homes and the occupants' personal property.
- Confirm Aglio Class Members vacate status of the Park.
- Coordinate and disperse approved relocation payments.
- Provide liaison with Client staff, as required.
- Maintain files for each displaced household.
- Provide periodic financial and scheduling status reports, by unit, on the status of the Park closure.

Advisory Services for Non-Class Members and Implementation of Park Closure:

- Provide referrals to other parks with vacant spaces, to coaches that are for-sale or rent in other parks, and to other housing options (for-sale housing, apartments, assisted living), to be updated on some periodic basis.
- Refer the services of mobile home movers and personal property movers to relocate trailers/mobile homes and the occupants' personal property.
- Maintain files for each displaced household.

Trust Account Administration and Check Processing:

- Establish an account for the purpose of paying Aglio Class Member claims.
- Obtain written authorization from the City prior to any release of funds.
- Process timely payments to claimants.
- Provide monthly bank statements and conduct reconciliations.
- Provide the City with a monthly accounting of disbursements.
- Upon completion and final payment to all claimants, promptly remit any remaining funds to the City with a final report of expenditures and a bank account reconciliation.

City of San Diego Responsibilities Related to Trust Account Administration to include:

- Provide OPC with timely written authorization for the payment of any claimant claim.
- Receive, review, and approve monthly bank statements and reports.
- Provide initial account funding and periodic account replenishment, as needed.
- Provide list of Aglio class members and their corresponding compensation.

Program & Project Management Services:

- Comprehensive initial project planning and participation in informational meetings with the public and official representatives. Attend up to two public and/or community meetings to discuss Park closure timing and process with Aglio Class Members and Non-Class Members.
- Track and manage all budgetary-related aspects of the project associated with OPC's Scope of Work.
- Assist with the development of administrative policies, procedures, and forms necessary to carry out the initial program.
- Ongoing general consultation and project coordination with the City, social service agencies, governmental entities, and project team members.
- Preparation of tracking reports that monitor the completion of project milestones.
- Preparation and presentation of a monthly status report based on the agreed-upon guidelines regarding information to be provided. Confer with the City verbally on general status, problem areas, and progress.
- QA/QC of OPC work-product and staff services

**ATTACHMENT #2 TO AMENDMENT #3 OF THE CONTRACT BETWEEN CITY OF SAN
DIEGO AND OPC**

Proposed Fees

| De Anza Cove Mobile Home Park Professional Services Fees | |
|---|------------------|
| Claims Processing and Advisory Assistance for Aglio Class Members (240 cases); T&M, Not-to-Exceed | \$360,000 |
| Advisory Assistance for Non-Class Members (5 cases); T&M, Not-to-Exceed | \$3,750 |
| Trust Account Administration and Check Processing; T&M, Not-to-Exceed | \$7,500 |
| Relocation Impact Report Amendment; Fixed Fee | \$4,000 |
| Project Planning and Management; T&M, Not-to-Exceed | \$20,000 |
| TOTAL* | \$395,250 |

*The proposed fees are based on OPC providing services for nine months to coincide with the closure of the Park. If additional services are required or services are requested beyond this timeframe, OPC will submit a change order request for an increase to our proposed fees associated with any additional work requested.

The proposed fees above are not fixed fees and services will be provided as needed and billed on an hourly basis, not to exceed the project total of \$395,250.00 without prior authorization from the City. For activities associated with the Scope of Services above, OPC will submit monthly invoices for the consulting services rendered based on the hourly rate schedule below.

OPC 2016 Schedule of Hourly Rates

| Relocation Management & Implementation | |
|---|-------------------|
| Senior Program Manager | \$250.00 per hour |
| Program Manager | \$200.00 per hour |
| Senior Project Manager | \$150.00 per hour |
| Project Manager | \$130.00 per hour |
| Senior Relocation Agent/Senior Analyst | \$115.00 per hour |
| Relocation Agent/Analyst | \$105.00 per hour |
| Project Support/Administrative | |
| Project Support Specialist | \$75.00 per hour |

**ATTACHMENT #2 TO AMENDMENT #3 OF THE CONTRACT BETWEEN CITY OF SAN
DIEGO AND OPC**

Billing Terms:

OPC considers local travel/mileage, photocopying, first class postage, telephone, facsimile, and mobile communication charges a normal part of doing business and such costs are included in the stated hourly rates. Out-of-pocket expenses including pre-approved travel and lodging, outside exhibit preparation, requested overnight courier or registered and/or certified mail (return receipt requested) charges, and specialty reproduction (unless otherwise specified) are in addition to the contract amount and will be charged at cost plus ten percent (+10%) for administration, coordination, and handling. Subcontracted services, other than those listed above, will be invoiced at cost plus ten percent (+10%).

In the event OPC is required to perform any act in relation to litigation arising out of any project with the City (for example, expert consulting, responding to a complaint, or proceeding with discovery and trial), such services are not part of this contract, nor are they part of our normal fees. If required, these types of services will be invoiced at two times the regular hourly rates.

In the event this contract extends twelve (12) months beyond the initial date of execution, the hourly rates and any remaining amount in the contract shall be adjusted upwardly by five percent (5%) per annum, compounded annually, on the anniversary date of this contract.

Written communication services in other languages would be an additional cost and would be billed separately based on quoted hourly rates by independent translation services. Verbal communication in Spanish, if necessary, will be included at no additional charge.

OPC will submit monthly invoices for the professional and trade services rendered based on the hourly rate schedule provided above. The City shall promptly pay the uncontested amount due within no more than thirty (30) days after receipt of invoice.

CERTIFICATE OF UNALLOTTED BALANCE

DEPT. _____
NO.: 1515

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

CC 3000008414

DEPT. NO.: 1515

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: Lina Chim

COMPTROLLER'S DEPARTMENT

| ACCOUNTING DATA | | | | | | | | | |
|-----------------|------|----------------|----------------|-----------------|-------------|---------------|-------------|-----|-----------------|
| Doc. Item | Fund | Funded Program | Internal Order | Functional Area | G/L Account | Business Area | Cost Center | WBS | Original Amount |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| TOTAL AMOUNT | | | | | | | | | |

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$395,250.00

Vendor: Overland, Pacific & Cutler, Inc.

Purpose: Authorizing the expenditure of funds for the 3rd Amendment to the consulting services agreement in relating to De Anza Cove case.

Date: December 9, 2015 By: Lina Chim

COMPTROLLER'S DEPARTMENT

| ACCOUNTING DATA | | | | | | | | | |
|-----------------|--------|----------------|----------------|------------------|-------------|---------------|-------------|-----|-----------------|
| Doc. Item | Fund | Funded Program | Internal Order | Functional Area | G/L Account | Business Area | Cost Center | WBS | Original Amount |
| 01 | 720045 | | | OTHR-00000000-GG | 512007 | 1515 | 1515000011 | | \$395,250.00 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| TOTAL AMOUNT | | | | | | | | | \$395,250.00 |

FUND OVERRIDE ☐

CC 3000008414

Passed by the Council of The City of San Diego on DEC 15 2015, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|-----------------|-------------------------------------|--------------------------|-------------------------------------|---------|
| Sherri Lightner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Lorie Zapf | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Todd Gloria | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Myrtle Cole | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Mark Kersey | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Chris Cate | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Scott Sherman | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| David Alvarez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Marti Emerald | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

Date of final passage DEC 18 2015

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Stacy Brady, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-

310173